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a “displaced person” (or for assistance under this section) as a result of the project;

(iii) The person is ineligible under 49 CFR 24.2(g)(2); or

(iv) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project.

(3) The owner may ask HUD, at any time, to determine whether a displacement is or would be covered by this section.

(h) *Definition of initiation of negotiations.* For purposes of determining the formula for computing the replacement housing assistance to be provided to a residential tenant displaced as a direct result of privately undertaken rehabilitation, demolition, or acquisition of the real property, the term “initiation of negotiations” means the owner’s execution of the Housing Assistance Payments Contract.

(Approved by the Office of Management and Budget under OMB Control Number 2506-0121)

[58 FR 43723, Aug. 17, 1993, amended at 65 FR 16724, Mar. 29, 2000]

§ 886.339 Emergency transfers for victims of domestic violence, dating violence, sexual assault, and stalking.

(a) Covered housing providers must develop and implement an emergency transfer plan that meets the requirements in 24 CFR 5.2005(e).

(b) In order to facilitate emergency transfers for victims of domestic violence, dating violence, sexual assault, and stalking, covered housing providers have discretion to adopt new, and modify any existing, admission preferences or transfer waitlist priorities.

(c) In addition to following requirements in 24 CFR 5.2005(e), when a safe unit is not immediately available for a victim of domestic violence, dating violence, sexual assault, or stalking who qualifies for an emergency transfer, covered housing providers must:

(1) Review the covered housing provider’s existing inventory of units and determine when the next vacant unit may be available; and

(2) Provide a listing of nearby HUD subsidized rental properties, with or without preference for persons of do-

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mestic violence, dating violence, sexual assault, or stalking, and contact information for the local HUD field office.

(d) Each year, covered housing providers must submit to HUD data on all emergency transfers requested under 24 CFR 5.2005(e), including data on the outcomes of such requests.

[81 FR 80814, Nov. 16, 2016]

§ 886.340 Broadband infrastructure.

Any new construction or substantial rehabilitation, as substantial rehabilitation is defined by 24 CFR 5.100, of a building with more than 4 rental units and that is subject to a Housing Assistance Payments contract executed or renewed after January 19, 2017 must include installation of broadband infrastructure, as this term is also defined in 24 CFR 5.100, except where the owner determines and documents the determination that:

(a) The location of the new construction or substantial rehabilitation makes installation of broadband infrastructure infeasible;

(b) The cost of installing broadband infrastructure would result in a fundamental alteration in the nature of its program or activity or in an undue financial burden; or

(c) The structure of the housing to be substantially rehabilitated makes installation of broadband infrastructure infeasible.

[81 FR 92638, Dec. 20, 2016]

PART 887 [RESERVED]

PART 888—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—FAIR MARKET RENTS AND CONTRACT RENT ANNUAL ADJUSTMENT FACTORS

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AUTHORITY: 42 U.S.C. 1437f and 3535d.

SOURCE: 50 FR 38796, Sept. 25, 1985, unless otherwise noted.

EDITORIAL NOTE: For revisions and amendments affecting Schedules A, B, C, and D, issued under part 888, but not carried in the Code of Federal Regulations, see the List of CFR Sections Affected, in the Finding Aids section of the printed volume and at www.govinfo.gov.

Subpart A—Fair Market Rents

§ 888.111 Fair market rents for existing housing: Applicability.

(a) The fair market rents (FMRs) for existing housing are determined by HUD and are used in the Section 8 Housing Choice Voucher program (HCV program) (part 982 of this title), Section 8 project-based assistance programs and other programs requiring

their use. In the HCV program, the FMRs are used to determine payment standard schedules. In the Section 8 project-based assistance programs, the FMRs are used to determine the maximum initial rent (at the beginning of the term of a housing assistance payments contract).

(b) Fair market rent means the rent, including the cost of utilities (except telephone), as established by HUD, pursuant to this subpart, for units of varying sizes (by number of bedrooms), that must be paid in the market area to rent privately owned, existing, decent, safe and sanitary rental housing of modest (non-luxury) nature with suitable amenities.

[64 FR 56911, Oct. 21, 1999, as amended at 81 FR 80580, Nov. 16, 2017]

§ 888.113 Fair market rents for existing housing: Methodology.

(a) *Basis for setting fair market rents.* Fair Market Rents (FMRs) are estimates of rent plus the cost of utilities, except telephone. FMRs are housing market-wide estimates of rents that provide opportunities to rent standard quality housing throughout the geographic area in which rental housing units are in competition. The level at which FMRs are set is expressed as a percentile point within the rent distribution of standard quality rental housing units in the FMR area. FMRs are set at the 40th percentile rent, the dollar amount below which the rent for 40 percent of standard quality rental housing units fall within the FMR area. The 40th percentile rent is drawn from the distribution of rents of all units within the FMR area that are occupied by recent movers. Adjustments are made to exclude public housing units, newly built units and substandard units.

(b) *Setting FMRs at the 40th percentile rent.* Generally, HUD will set the FMRs at the 40th percentile rent, but no lower than 90 percent of the previous year's FMR for the FMR area.

(c) *Setting Small Area FMRs.* (1) HUD will set Small Area FMRs for certain metropolitan FMR areas for use in the administration of tenant-based assistance under the HCV program. HUD will establish the selection values used to determine those metropolitan areas

through a FEDERAL REGISTER notice on November 16, 2016 and may update the selection values through a FEDERAL REGISTER notice, subject to public comment. The selection criteria used to determine those metropolitan areas are:

- (i) The number of vouchers under lease in the metropolitan FMR area;
- (ii) The percentage of the standard quality rental stock, within the metropolitan FMR area is in small areas (ZIP codes) where the Small Area FMR is more than 110 percent of the metropolitan FMR area;
- (iii) The percentage of voucher families living in concentrated low income areas;
- (iv) The percentage of voucher families living in concentrated low income areas relative to the percentage of all renters within these areas over the entire metropolitan area; and
- (v) The vacancy rate for the metropolitan area.

(2) For purposes of determining applicability of Small Area FMRs to a metropolitan area, the term “concentrated low-income areas” means:

- (i) Those census tracts in the metropolitan FMR area with a poverty rate of 25 percent or more; or
- (ii) Any tract in the metropolitan FMR area where at least 50 percent of the households earn less than 60 percent of the area median income and are designated by HUD as Qualified Census Tracts in accordance with section 42 of the Internal Revenue Code (26 U.S.C. 42).

(3) If a metropolitan area meets the criteria of paragraph (c)(1) of this section, Small Area FMRs will apply to the metropolitan area and all PHAs administering HCV programs in that area will be required to use Small Area FMRs. A PHA administering an HCV program in a metropolitan area not subject to the application of Small Area FMRs may opt to use Small Area FMRs by seeking approval from HUD’s Office of Public and Indian Housing (PIH) through written request to PIH.

(4) HUD will designate Small Area FMR areas at the beginning of a Federal fiscal year, such designations will be permanent, and will make new area designations every 5 years thereafter as new data becomes available. HUD

may suspend a Small Area FMR designation from a metropolitan area, or may temporarily exempt a PHA in a Small Area FMR metropolitan area from use of the Small Area FMRs, when HUD by notice makes a documented determination that such action is warranted. Actions that may serve as the basis of a suspension of Small Area FMRs are:

- (i) A Presidentially declared disaster area that results in the loss of a substantial number of housing units;
- (ii) A sudden influx of displaced households needing permanent housing; or
- (iii) Other events as determined by the Secretary.

(5) Small Area FMRs only apply to tenant-based assistance under the HCV program. However, a PHA may elect to apply Small Area FMRs to project-based voucher (PBV) units at 24 CFR part 983 as provided in paragraph (h) of this section.

(d) *FMR areas.* FMR areas comprise metropolitan areas and nonmetropolitan counties and Small Area FMR areas as follows:

(1) Generally, FMR areas are metropolitan areas and nonmetropolitan counties. With several exceptions, the most current Office of Management and Budget (OMB) metropolitan area definitions of Metropolitan Statistical Areas (MSAs) are used because of their generally close correspondence with housing market area definitions. HUD may make exceptions to OMB definitions if the MSAs encompass areas that are larger than housing market areas. The counties deleted from the HUD-defined FMR areas in those cases are established as separate metropolitan county FMR areas. FMRs are established for all areas in the United States, the District of Columbia, and the Insular Areas of the United States.

(2) Small Area FMR areas are the U.S. Postal Service ZIP code areas within a designated metropolitan area.

(e) *Data sources.* (1) HUD uses the most accurate and current data available to develop the FMR estimates and may add other data sources as they are discovered and determined to be statistically valid. The following sources of survey data are used to develop the base-year FMR estimates:

(i) The most recent American Community Survey conducted by the U.S. Census Bureau, which provides statistically reliable rent data.

(ii) Locally collected survey data acquired through Address-Based Mail surveys or Random Digit Dialing (RDD) telephone survey data, based on a sampling procedure that uses computers to select statistically random samples of rental housing.

(iii) Statistically valid information, as determined by HUD, presented to HUD during the public comment and review period.

(2) Base-year recent mover adjusted FMRs are updated and trended to the midpoint of the program year they are to be effective using Consumer Price Index (CPI) data for rents and for utilities.

(f) *Unit size adjustments.* (1) For most areas the ratios developed incorporating the most recent American Community Survey data are applied to the two-bedroom FMR estimates to derive FMRs for other bedroom sizes. Exceptions to this procedure may be made for areas with local bedroom intervals below an acceptable range. To help the largest most difficult-to-house families find units, higher ratios than the actual market ratios may be used for three-bedroom and larger-size units.

(2) The FMR for single room occupancy housing is 75 percent of the FMR for a zero bedroom unit.

(g) *Manufactured home space rental.* The FMR for a manufactured home space rental (for the HCV program under 24 CFR part 982) is 40 percent of the FMR for a two-bedroom unit for the metropolitan area or non-metropolitan county, as applicable. Small Area FMRs under paragraph (c) of this section do not apply to manufactured home space rentals.

(h) *Small Area FMRs and Project-based vouchers.* Small Area FMRs do not apply to Project-based vouchers regardless of whether HUD designates the metropolitan area or approves the PHA for Small Area FMRs under paragraph (c)(3) of this section. The following exceptions apply:

(1) Where the PHA notice of owner selection under 24 CFR 983.51(d) was made on or before the effective dates of

both the Small Area FMR designation and the PHA administrative policy, the PHA and owner may mutually agree to apply the Small Area FMR. The application of the Small Area FMRs must be prospective and consistent with the PHA administrative plan. The owner and PHA may not subsequently choose to revert back to the use of the metropolitan-wide FMRs for the PBV project. If the rent to owner will increase as a result of the mutual agreement to apply the Small Area FMRs to the PBV project, the rent increase shall not be effective until the first annual anniversary of the HAP contract in accordance with 24 CFR 983.302(b).

(2) Where the PHA notice of owner selection under 24 CFR 983.51(d) was made after the effective dates of both the Small Area FMR designation and the PHA administrative policy, the Small Area FMRs shall apply to the PBV project if the PHA administrative plan provides that Small Area FMRs are used for all future PBV projects. If the PHA chooses to implement this administrative policy, the policy must apply to all future PBV projects and the PHA's entire jurisdiction. An owner and the PHA may not subsequently choose to apply the metropolitan area FMR to the project, regardless of whether the PHA subsequently changes its administrative plan to revert to the use of metropolitan-wide FMR for future PBV projects.

(3) For purposes of this section, the term "effective date of the Small Area FMR designation" means:

(i) The date that HUD designated a metropolitan area as a Small Area FMR area; or

(ii) The date that HUD approved a PHA request to voluntarily opt to use Small Area FMRs for its HCV program, as applicable.

(4) For purposes of this section, the term "effective date of the PHA administrative policy" means the date the administrative policy was formally adopted as part of the PHA administrative plan by the PHA Board of Commissioners or other authorized PHA officials in accordance with § 982.54(a).

(i) *Transition of metropolitan areas previously subject to 50th percentile FMRs.* (1) A metropolitan area designated as 50th percentile FMR areas for which

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the 3-year period has not expired prior to January 17, 2017 shall transition out of 50th percentile FMRs as follows:

(i) A 50th percentile FMR area that is designated for Small Area FMRs in accordance with paragraph (c) of this section will transition to the Small Area FMRs upon the effective date of the Small Area FMR designation;

(ii) A 50th percentile metropolitan FMR area not designated as a Small Area FMRs in accordance with paragraph (c) of this section, will remain a 50th percentile FMR until the expiration of the three-year period, at which time the metropolitan area will revert to the standard FMR based on the 40th percentile rent for the metropolitan area.

(2) A PHA with jurisdiction in a 50th percentile FMR area that reverts to the standard 40th percentile FMR may request HUD approval of payment standard amounts based on the 50th percentile rent in accordance with 24 CFR 982.503(f).

(3) HUD will calculate the 50th percentile rents for certain metropolitan areas for purposes of this transition and to approve success rate payment standard amounts in accordance with 24 CFR 982.503(e). As is the case for determining 40th percentile rent, the 50th percentile rent is drawn from the distribution of rents of all units that are occupied by recent movers and adjustments are made to exclude public housing units, newly built units and substandard units.

[81 FR 80580, Nov. 16, 2016]

§ 888.115 Fair market rents for existing housing: Manner of publication.

(a) *Publication of FMRs.* FMRs will be published at least annually by HUD on the World Wide Web, or in any other manner specified by the Secretary. HUD will publish a notice announcing the publication of the FMRs in the FEDERAL REGISTER, to be effective October 1 of each year, and provide for a minimum of 30 days of public comments and requested for reevaluation of the FMRs in a jurisdiction. The FMRs will become effective no earlier than 30 days after the date the notice publishes in the FEDERAL REGISTER (*e.g.*, if HUD fails to publish FMRs 30 days before October 1, the effective

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date will be 30 days after publication), except for areas where HUD receives comments during the minimum 30-day comment period requesting reevaluation of the FMRs in a jurisdiction. After HUD reviews a request for reevaluation, HUD will post on the World Wide Web the final FMRs for the areas that have been reevaluated and publish a notice in the FEDERAL REGISTER announcing the publication and the effective date.

(b) *Changes in methodology.* HUD will publish for comment in the FEDERAL REGISTER a document proposing material changes in the method for estimating FMRs and shall respond to public comment on the proposed material changes in the subsequent FEDERAL REGISTER document announcing the availability of new FMRs based on the revised method for estimating FMRs.

[81 FR 80581, Nov. 16, 2016]

Subpart B—Contract Rent Annual Adjustment Factors

§ 888.201 Purpose.

Automatic Annual Adjustment Factors are used to adjust rents under the Section 8 Housing Assistance Payments Program.

[44 FR 75383, Dec. 20, 1979]

§ 888.202 Manner of publication.

Adjustment Factors will be published in the FEDERAL REGISTER at least annually by Notice. Interim revisions may be published as market conditions indicate. In the case of revised factors applicable only to specific areas, the HUD Field Office will publish a notice appropriate to the limited scope of the revised factors (see § 888.204).

[42 FR 60508, Nov. 25, 1977, as amended at 44 FR 75383, Dec. 20, 1979; 47 FR 4252, Jan. 29, 1982]

§ 888.203 Use of contract rent automatic annual adjustment factors.

(a) To compute an adjustment to a Contract Rent, find the schedule of Automatic Annual Adjustment Factors for the appropriate Census Region or Standard Metropolitan Statistical Area—

(1) If the Contract Rent includes all utilities, use the factor shown on the

basic schedule for the rent bracket within which the particular Contract Rent falls and for the applicable size of unit (by number of bedrooms).

(2) If the Contract Rent does not include all utilities but does include the highest cost utility, use the appropriate factor shown on the basic schedule.

(3) If the Contract Rent does not include any utilities or includes some utilities but not the highest cost utility, use the Annual Adjustment Factor for Contract Rent (Excluding Utilities).

(b) The adjusted monthly amount of the Contract Rent of a dwelling unit shall be determined by multiplying the Contract Rent in effect on the anniversary date of the contract by the applicable Automatic Annual Adjustment Factor (see paragraph (a) of this section) and rounding the result as follows:

(1) If the result contains a fractional dollar amount ranging from \$0.01 to \$0.49, round to the next lower whole dollar amount;

(2) If the result contains a fractional dollar amount ranging from \$0.50 to \$0.99, round to the next higher whole dollar amount.

[42 FR 60508, Nov. 25, 1977, as amended at 44 FR 21769, Apr. 12, 1979; 47 FR 4252, Jan. 29, 1982; 59 FR 38564, July 29, 1994]

§ 888.204 Revision to the automatic annual adjustment factors.

If the application of the Annual Adjustment Factors results in rents that are substantially lower than rents charged for comparable units not receiving assistance under the U.S. Housing Act of 1937, in the area for which the factor was published or a portion thereof, and it is shown to HUD that the costs of operating comparable rental housing have increased at a substantially greater rate than the Adjustment Factors, the HUD Field Office will consider establishing separate or revised Automatic Annual Adjustment Factors for that particular area. Any request for revision of the factors must be accompanied by an identification of the area, its boundaries and evidence that the area constitutes the largest contiguous area in which substantially the same rent levels prevail. The HUD Field Office will publish appropriate

notice of the establishment of any such revised Automatic Annual Adjustment Factors. These factors will remain in effect until superseded by the subsequent publication of Automatic Annual Adjustment Factors pursuant to § 888.202.

[44 FR 21769, Apr. 12, 1979]

Subpart C—Retroactive Housing Assistance Payments for New Construction, Substantial Rehabilitation, State Finance Agencies, Section 515 Farmers Home Administration, Section 202 Elderly or Handicapped, and Special Allocations Projects

SOURCE: 56 FR 20084, May 1, 1991, unless otherwise noted.

§ 888.301 Purpose and scope.

(a) *Purpose.* This subpart describes the basic policies and procedures for the retroactive payment of Housing Assistance Payments to eligible project owners for the period from October 1, 1979 to May 31, 1991 and for one-time Contract Rent determinations for such eligible project owners.

(b) *Applicability.* This subpart applies to all project-based Section 8 Housing Assistance Payments Contracts under New Construction (Part 880); Substantial Rehabilitation (Part 881); State Finance Agencies (Part 883); and Section 515 Farmers Home Administration (Part 884). It also applies to those projects under Section 202 Elderly or Handicapped (Part 885) and Special Allocations (Part 886, Subparts A and C) whose Contract Rents are adjusted by use of the Annual Adjustment Factors (AAFs), as described in subpart B of this part.

(c) *Eligible project owners.* Project owners may be eligible for retroactive payments if, during the period from October 1, 1979 to May 31, 1991:

(1) The use of a comparability study by HUD (or the Contract Administrator), which was conducted as an independent limitation on the amount of rent adjustment that would have resulted from use of the applicable AAF,

resulted in the reduction of the maximum monthly Contract Rents for units covered by a Housing Assistance Payments (HAP) contract or resulted in less than the maximum increase for those units than would otherwise be permitted by the AAF; or

(2) The HAP contract required a project owner to request annual rent adjustments, and the project owner certifies that a request was not made because of an anticipated reduction of the maximum monthly Contract Rents resulting from a comparability study.

§ 888.305 Amount of the retroactive Housing Assistance Payments.

(a) *Recalculating the total rent adjustment.* To establish the amount of the retroactive HAP payment for which a project owner meeting the criteria in § 888.301(c) is eligible, the total rent adjustment will be recalculated for the period from October 1, 1979 to May 31, 1991. For purposes of establishing the amount of the retroactive payment only, the total rent adjustment will be an amount equal to the Contract Rent, minus the amount of the Contract Rent attributable to debt service, multiplied by the applicable AAF, for each year.

(b) *Calculating the retroactive payment.* HUD (or the Contract Administrator) will pay, as a retroactive Housing Assistance Payment, the amount, if any, by which the total rent adjustment, calculated under paragraph (a) of this section, exceeds the rent adjustments actually approved for the same time period, except that in no event will any payment be an amount less than 30 percent of the aggregate of the full Contract Rent multiplied by the applicable AAF, minus the sum of the rent adjustments actually approved for the same time period, adjusted by the average occupancy rate.

(c) *Occupancy rates.* (1) Retroactive payments will be made only for units that were occupied, based on average occupancy rate, including units qualifying for vacancy payments under 24 CFR 880.611, 881.611, 883.712, 884.106, 885.985, 886.109, or 886.309, during the time period from October 1, 1979 to May 31, 1991.

(2) When requesting retroactive payment, a project owner must, if the in-

formation is available, submit documentation of occupancy rates, on either an annual or monthly basis, for the same time period. The average occupancy rate will be based on these records. If records are unavailable for the full time period, HUD (or the Contract Administrator) will establish an average occupancy rate, to be used for the entire period, from the occupancy rate for the three years immediately preceding May 31, 1991.

(d) *Revised AAFs.* For any year during the period from October 1, 1979 to May 31, 1991, where a HUD field office published a revised Annual Adjustment Factor that replaced the applicable AAF for a specific locality under 24 CFR 888.204, the revised Annual Adjustment Factor, which applied to all projects in that area, will be used to recalculate the total rent adjustment under paragraph (a) of this section, and to establish the amount of the retroactive payments.

(e) *Special adjustments.* When calculating the total rent adjustments and establishing the amount of the retroactive payments under paragraphs (a) and (b) of this section, any special adjustments granted under 24 CFR 880.609(b), 881.609(b), 883.710(b), 884.109(c), 886.112(c), or 886.312(c) during the time period from October 1, 1979 to May 31, 1991, to reflect substantial general increases in real property taxes, assessments, utility rates, utilities not covered by regulated rates, or for special adjustments for any other purpose authorized by a waiver of the regulations, will be deducted from the Contract Rent before applying the AAF.

(f) *AAFs less than 1.0.* For any area where an AAF of less than 1.0 was published, a factor of 1.0 will be used to recalculate the total rent adjustments and to establish the amount of the retroactive payments under paragraphs (a) and (b) of this section.

(g) *Debt service.* (1) For purposes of this section, debt service includes principal, interest, and the mortgage insurance premium, if any.

(2) The monthly debt service set forth in the original mortgage documents for a project will be used to compute the debt service portion of the contract rent. The debt service will be

compared to the spread of unit sizes included in the original HAP contract, and the amount used in the calculation will be based on the percentage of total rent potential of the various unit types.

(3) If, in some cases, HUD or the Contract Administrator cannot determine the debt service for a project, the project owner will be asked to provide documentation of the debt service. The project owner will be notified by the HUD Field Office or the Contract Administrator of the need for documentation of the debt service, and allowed 30 days to respond, or for such longer period as approved by HUD or the Contract Administrator on a case-by-case basis. Where the debt service is not available to HUD or the Contract Administrator and the owner is unable to provide the necessary information, retroactive payments cannot be made.

(h) *Applicable AAF.* The applicable AAF is the factor in effect on the anniversary date of the contract and appropriate for the area, for the size of the unit, and for the treatment of utilities; except where, for any year when AAFs were published after November 8 and made retroactive to November 8, a project owner was given the option to choose the factor in effect on the anniversary date or the retroactive factor, the applicable AAF is the factor chosen by the project owner in that year.

(Approved by the Office of Management and Budget under control number 2502-0042)

§ 888.310 Notice of eligibility requirements for retroactive payments.

(a) *Notice of eligibility requirements.* HUD (or the Contract Administrator) will give written notice to all current owners of projects of the eligibility requirements for retroactive payments. Eligible project owners must make a request for payment and a request for a one-time contract determination within 60 days from the date of the notice.

(b) *Request for payment.* (1) Owners eligible for retroactive payments under § 888.301(c) must submit a request for a calculation of the total rent adjustments and the establishment of the amount of the retroactive payment, as described in § 888.301 (a) and (b), and documentation of the occupancy rate

for the period from October 1, 1979, to May 31, 1991, if available.

(2) Owners whose HAP contract requires a request to be made for annual rent adjustments must certify that a request was not made because of an anticipated reduction in the Contract Rents as a result of a comparability study. The certification must contain the year or years upon which the request for payment is based and a statement of the basis for the belief that rents would have been reduced.

(3) Retroactive payments will be made to owners over a three-year period as funds are appropriated for that purpose. When funds are available for payment, HUD will publish a FEDERAL REGISTER notice containing procedures for claiming payments.

(c) *Request for one-time contract rent determination.* When making a request for payment, eligible owners may also request a one-time contract rent determination, as described in § 888.320. Eligible owners may request a one-time contract rent determination even if they choose not to request retroactive payments, provided they are eligible for retroactive payments.

(d) *Transfer of ownership since October 1, 1979.* Eligible owners who request retroactive payments must certify that they are entitled to the entire amount of the payment. Any owner who is unable to certify must present documentation of an agreement between the current and former owners of the proportionate share of the payment for which each is eligible.

(Approved by the Office of Management and Budget under control number 2502-0042)

§ 888.315 Restrictions on retroactive payments.

(a) *Restrictions on distribution of surplus cash.* Retroactive payments for HUD-insured projects and other projects subject to limitations on the distribution of surplus cash will be deposited, in the manner of Housing Assistance Payments, into the appropriate project account. The payments will be subject to HUD rules and procedures (or rules and procedures of other agencies, as appropriate), described in the applicable regulations and the HAP contracts, for distribution of surplus cash to project owners.

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(b) *Replacement reserve.* Projects required by HUD regulations to maintain a reserve for replacement account and to adjust the annual payment to the account each year by the amount of the annual rent adjustment must deposit into the account the proportionate share of any retroactive payment received, in accordance with HUD regulations and the HAP contract.

(c) *Physical condition of HUD-insured or State-financed projects.* If the most recent physical inspection report of a HUD-insured project, completed by the mortgagee, or by HUD or the Contract Administrator if a mortgagee inspection is not present, shows significant deficiencies that have not been addressed to the satisfaction of HUD by the date the retroactive payment is deposited into the project account, the payment will not be made available for surplus cash distribution until the deficiencies are resolved or a plan for their resolution has been approved by HUD.

§ 888.320 One-time Contract Rent determination.

(a) *Determining the amount of the new Contract Rent.* Project owners eligible for retroactive payments, as described in § 888.301(c), may request a one-time Contract Rent determination, to be effective as described in paragraph (c) of this section. The request for a one-time rent determination must be made when submitting a request for retroactive payments, as described in § 888.315. If no claim for retroactive payments is made, an owner may submit only the request for a one-time rent determination, provided the owner is eligible for retroactive payments. The new Contract Rent under this provision will be the greater of:

(1) The Contract Rent currently approved by HUD (or the Contract Administrator); or

(2) An amount equal to the applicable AAF multiplied by the Contract Rent minus debt service, calculated for each year from October 1, 1979, to May 31, 1991.

(b) *Currently approved rent.* The Contract Rent currently approved by HUD (or the Contract Administrator) is the Contract Rent stated in the most recent amendment to the HAP Contract signed by both HUD (or the Contract

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Administrator) and the owner, or as shown on HUD Form 92458 (Rental Schedule) if the most recent amendment to the HAP Contract cannot be located.

(c) *Effective date of new Contract Rent.* The new Contract Rent, determined under paragraph (a) of this section, will be effective on May 31, 1991.

(Approved by the Office of Management and Budget under control number 2505–0042)

Subpart D—Retroactive Housing Assistance Payments for Moderate Rehabilitation Projects

SOURCE: 56 FR 20085, May 1, 1991, unless otherwise noted.

§ 888.401 Purpose and scope.

(a) *Purpose.* This subpart describes the basic policies and procedures for the retroactive payment of Housing Assistance Payments to eligible project owners for the period from October 1, 1979 to May 31, 1991 and a one-time Contract Rent determination for such eligible project owners.

(b) *Applicability.* This subpart applies to all Moderate Rehabilitation projects under 24 CFR part 882, subparts D, E, and H.

(c) *Eligible project owners.* Project owners may be eligible for retroactive payments if, during the period from October 1, 1979 to May 31, 1991:

(1) The use of a comparability study by the Public Housing Agency (PHA) as contract administrator, which was conducted as an independent limitation on the amount of rent adjustment that would have resulted from use of the applicable AAF, resulted in the reduction of the maximum monthly Contract Rents for units covered by a Housing Assistance Payments (HAP) contract or resulted in less than the maximum increase for those units than would otherwise be permitted by the AAF; or

(2) The project owner certifies that a request for an annual rent adjustment was not made because of an anticipated reduction of the maximum monthly Contract Rents resulting from a comparability study.

§ 888.405 Amount of the retroactive Housing Assistance Payments.

(a) *Recalculating the total rent adjustment.* To establish the amount of the retroactive HAP payment for which a project owner meeting the criteria in § 888.401(c) is eligible, the total rent adjustment will be recalculated for the period from October 1, 1979 to May 31, 1991. Rents for that period will be recalculated, under the procedures set out in 24 CFR 882.410(a)(1), by applying the AAF for any affected year, and recalculating the rents for the remainder of the period as necessary. For each year thereafter, all rent adjustments made at the request of the owner at the time will be recalculated, under the procedures in 24 CFR 882.410(a)(1), to account for the new adjustments.

(b) *Calculating the retroactive payment.* HUD will pay, through the PHA, as a retroactive Housing Assistance Payment the amount, if any, by which the total rent adjustment, calculated under paragraph (a) of this section exceeds the rent adjustments actually approved for the same time period.

(c) *Occupancy rate.* (1) Retroactive payments will be made only for units that were occupied, based on average occupancy rate, including units qualifying for vacancy payments under 24 CFR 882.411, during the time period from October 1, 1979 to May 31, 1991.

(2) When requesting a retroactive payment, a project owner must, if the information is available, submit documentation of occupancy rates, on either an annual or monthly basis, for the same time period. The average occupancy rate will be based on these records. If records are unavailable for the full time period, the PHA will establish an average occupancy rate, to be used for the entire period, from the occupancy rate for the three years immediately preceding May 31, 1991.

(d) *Revised AAFs.* For any year during the period from October 1, 1979 to May 31, 1991, where a HUD field office published a revised Annual Adjustment Factor that replaced the applicable AAF for a specific locality under 24 CFR 888.204, the revised Annual Adjustment Factor, which applied to all projects in that area, will be used to recalculate the total rent adjustment under paragraph (a) of this section, and

to establish the amount of the retroactive payments.

(e) *Special adjustments.* When calculating the total rent adjustments and establishing the amount of the retroactive payments under paragraphs (a) and (b) of this section, any special adjustments granted under 24 CFR 882.410(a)(2) during the period from October 1, 1979 to May 31, 1991, to reflect substantial general increases in real property taxes, assessments, utility rates, utilities not covered by regulated rates, or for special adjustments for any other purpose authorized by a waiver of the regulations, will be deducted from the base rent before applying the AAF.

(f) *AAFs less than 1.0.* For any area where an AAF of less than 1.0 was published, a factor of 1.0 will be used to recalculate the total rent adjustments and to establish the amount of the retroactive payments under paragraphs (a) and (b) of this section.

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§ 888.410 Notice of eligibility requirements for retroactive payments.

(a) *Notice of eligibility requirements.* PHAs will give written notice to all current owners of projects, for which they are the Contract Administrators, of the eligibility requirements for retroactive payments. Eligible project owners must make a request for payment or a request for a one-time contract determination within 60 days from the date of the notice.

(b) *Request for payment.* (1) Owners eligible for retroactive payments under § 888.401(c) must submit a request for a calculation of the total rent adjustments and the establishment of the amount of the retroactive payment, as described in § 888.401 (a) and (b), and documentation of the occupancy rate for the period from October 1, 1979 to May 31, 1991, if available.

(2) Owners claiming eligibility under § 888.401(c)(2) must certify that a request was not made because of an anticipated reduction in the Contract Rents as a result of a comparability study. The certification must contain

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the year or years upon which the request for payment is based and a statement of the basis for the belief that rents would have been reduced.

(3) Retroactive payments will be made to owners over a three-year period as funds are appropriated for that purpose. When funds are available for payment, HUD will publish a FEDERAL REGISTER Notice containing procedures for claiming payments.

(c) *Request for one-time contract rent determination.* When making a request for payment, eligible owners may also request a one-time contract rent determination, as described in § 888.420. Eligible owners may request a one-time contract rent determination even if they choose to forgo receiving retroactive payments, provided they are eligible for retroactive payments.

(d) *Transfer of ownership since October 1, 1979.* Eligible owners requesting retroactive payments must certify that they are entitled to the entire amount of the payment. Any owner who is unable to certify must present documentation of an agreement between the current and former owners of the proportionate share of the payment for which each is eligible.

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§ 888.415 Restrictions on retroactive payments.

(a) *Restrictions.* Retroactive payments are subject to all regulations, procedures, or restrictions that apply to Housing Assistance Payments.

(b) *Review of initial rents.* Before calculating the amount of any retroactive payment, the PHA, if directed by HUD, will review whether rents were excessive when initially set.

(c) *Physical condition of projects.* If the most recent physical inspection report by the PHA shows significant deficiencies that have not been addressed to the satisfaction of the PHA by the date the retroactive payment is deposited into the project account, the payment will not be made available until the deficiencies are resolved or a plan for their resolution has been approved by the PHA.

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§ 888.420 One-time Contract Rent determination.

(a) *Determining the amount of the new Contract Rent.* Project owners eligible for retroactive payments, as described in § 888.401(c), may request a one-time Contract Rent determination, to be effective as described in paragraph (c) of this section. The request for a one-time rent determination must be made when submitting a request for retroactive payments, as described in § 888.415. If no claim for retroactive payments is made, an owner may submit only the request for a one-time rent determination, provided the owner is eligible for retroactive payments. The new Contract Rent under this provision will be the greater of:

(1) The Contract Rent currently approved by the PHA; or

(2) An amount equal to the Contract Rent as adjusted to May 31, 1991 under § 888.405(a).

(b) *Currently approved rent.* The Contract Rent currently approved by the PHA is the Contract Rent stated in the most recent amendment to the HAP Contract signed by both the PHA and the owner.

(c) *Effective date of new Contract Rent.* The new Contract Rent, determined under paragraph (a) of this section, will be effective on May 31, 1991.

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PART 891—SUPPORTIVE HOUSING FOR THE ELDERLY AND PERSONS WITH DISABILITIES

Subpart A—General Program Requirements

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